

REMARKS

Applicant would like to thank the Examiner for the careful consideration given the present application.

Pending claims 1, 3 and 4 have been provisionally rejected under the doctrine of obviousness-type double patenting as being unpatentable over copending application no. 11/138,401. For the following reasons, applicants respectfully traverse this provisional rejection.

According to the present invention as defined in claim 1, the first granules (16) and the second granules (17) are mixed together, and the mixture (i.e., a mixture of the first granules and the second granules) is charged into a frame member. In the mixture, the second granules are disposed between the first granules as if the first granules are in contact with each other via the second granules, as shown in Figs. 2, 5 and 11.

On the other hand, in the cited '401 application, first granules are charged into a frame structure or member, and subsequently second granules of a diameter not more than 20% of the first granules are charged into the frame member so that gaps between the first granules are filled with the second granules, as recited in claims 7 and 8. Before the second granules are charged, the first granules are in substantially directly contact with each other, as shown in Figs. 7, 8 and 10 of the application.

Accordingly, in the '401 application there is no teaching or suggestion of mixing the first and second granules to form a mixture, and then charging the frame member with the mixture. As such, the claims of the present application are

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patentably distinct from those of the '401 application. Therefore, it is submitted that the double patenting rejection should be withdrawn. Notice to that effect is hereby requested.

Further, it is noted that the present application is the earlier-filed of the two applications at issue. According to MPEP 804 (I)(B)(1):

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. If the ODP rejection is the only rejection remaining in the later-filed application, while the earlier-filed application is rejectable on other grounds, a terminal disclaimer must be required in the later-filed application before the rejection can be withdrawn.

If "provisional" ODP rejections in two applications are the only rejections remaining in those applications, the examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer. A terminal disclaimer must be required in the later-filed application before the ODP rejection can be withdrawn and the application permitted to issue

Therefore, according to the MPEP, since this case is the first-filed application the obviousness-type double patenting rejection should be withdrawn in this case.

Finally, it is noted that the present application is discussed in the '401 application under the heading 'Description of Related Art' (page 1, lines 17-19 and page 6, lines 5-24). In this regard it is pointed out that the publication JP 2003-276044 is a publication of the JP 2002-087061 application, which is the base priority application for the present application.

In light of the foregoing, and there being no further rejections of the application on the art of record, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney

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to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 18-0160, our Order No. SHM-15614.

Respectfully submitted,

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